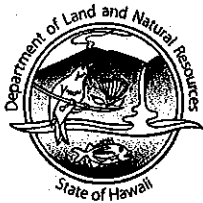


LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**DIVISION OF AQUATIC RESOURCES**  
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AQUATIC RESOURCES  
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CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS  
WATER RESOURCE MANAGEMENT

June 8, 2007

Board of Land and Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i

**SUBJECT:** Enforcement Action against Crystal Seahorse, Ltd. and Captain Peter Wood  
Involving Prohibited Activities at 'Āhihi-Kīna'u Natural Area Reserve, Maui

**SUMMARY:** This submittal requests the Board to find that Crystal Seahorse, Ltd. and Captain Peter Wood violated Departmental rules by illegally conducting commercial operations, operating a motorized vehicle, and anchoring in the 'Āhihi-Kīna'u Natural Area Reserve, which caused damage to stony corals, and to levy a fine in the amount of \$13,750 for these violations and an assessment in the amount of \$3,554 for administrative costs, as outlined in more detail below.

**DATE OF INCIDENT:** August 18, 2005

<b>AGAINST:</b>	Crystal Seahorse, Ltd. PMB 307 5095 Napili Hau St. #109B Lahaina, HI 96761	Peter Wood Captain, <i>Shangri-La</i> President, Sailing Maui, Inc. Vice-President, Crystal Seahorse, Ltd.
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**LOCATION:** Marine component of 'Āhihi-Kīna'u Natural Area Reserve, Maui County, Hawai'i

**PREPARED BY:** Blaine Rogers, Legal Fellow, Division of Aquatic Resources

**PROPOSED ADMINISTRATIVE PENALTIES:**

Available Penalties	Proposed Penalty	Offense	Legal Authority <sup>1</sup>	Responsible Party <sup>2</sup>
Graduated fines (up to \$2,500 for 1 <sup>st</sup> offense)	\$2,500	Unlawfully engaging in commercial activities within the 'Āhihi-Kīna'u Natural Area Reserve	HAR § 13-209-4(13) & HRS § 195-8(b)	Crystal Seahorse, Ltd.
Graduated fines (up to \$2,500 for 1 <sup>st</sup> offense)	\$2,500	Unlawfully operating a motorized water vehicle within the marine waters of the 'Āhihi-Kīna'u Natural Area Reserve	HAR § 13-209-4(11) & HRS § 195-8(b)	Peter Wood
Graduated fines (up to \$5,000 for 1 <sup>st</sup> offense)	\$5,000	Unlawfully anchoring a vessel equipped with mechanical propulsion within the marine waters of the 'Āhihi-Kīna'u NAR	HAR § 13-244-32(b) & HRS § 200-14.5(c)	Peter Wood
Graduated fines (up to \$1,000 for 1 <sup>st</sup> offense)	\$1,000	Unlawfully breaking and damaging stony coral	HAR § 13-95-70(a) & HRS § 187A-12.5(c)	Peter Wood
Graduated fines (up to \$1,000 per specimen for 1 <sup>st</sup> offense)	\$2,750	\$250 fine per specimen of stony coral damaged x 11 specimen	HRS § 187A-12.5(e)	Peter Wood
Admin fees & costs	\$3,554	Costs to assess and repair coral damage, DOCARE investigative costs, staff time	HRS §§ 187A-12.5 & 200-14.5	Peter Wood
<b>TOTAL</b>	<b>\$17,304</b>			

<sup>1</sup> "HAR" refers to the Hawaii Administrative Rules. "HRS" refers to the Hawaii Revised Statutes.

<sup>2</sup> For purposes of this submittal, staff is recommending that responsibility for each of the four violations be assigned pursuant to the regulation at issue. Crystal Seahorse, Ltd. ("Crystal Seahorse"), a Hawai'i corporation, is listed as the permittee on the *Shangri-La's* State issued Commercial Operating Area Use Permit ("commercial permit") that permitted operation of commercial boating tours in the Kaanapali and West Maui areas. (See Exhibit A). It is recommended that Crystal Seahorse, as the commercial permit holder of record, be fined for violating HAR § 13-209-4(13) for allegedly conducting commercial tour operations within the 'Āhihi-Kīna'u NAR without a special use permit issued by the Department. Mr. Wood, the captain of the *Shangri-La* on August 18, 2005, is Vice-President, Secretary, Treasurer, and Director of Crystal Seahorse, according to the Department of Commerce and Consumer Affairs ("DCCA") website. (See Exhibit B). It is recommended that he be fined in his individual capacity as captain of the *Shangri-La* for violating HAR §§ 13-209-4(11), 13-244-32(b) and 13-95-70(a); specifically, for allegedly operating a motorized vessel and anchoring in the NAR, and for damaging stony coral.

## I. INTRODUCTION

The Natural Area Reserves System ("NARS") was established in 1970 by the Legislature to "preserve in perpetuity specific land and water areas which support communities, as relatively unmodified as possible, of the natural flora and fauna, as well as the geological sites, of Hawai'i." HRS Chapter 195. There are currently 19 Natural Area Reserves covering approximately 109,000 acres on Kaua'i, O'ahu, Moloka'i, Maui, and the island of Hawai'i. Although the NARS encompasses less than three percent of the State's land area, it represents the greatest concentration of protected biodiversity in the nation.

The 2,045 acre 'Āhihi-Kīna'u Natural Area Reserve ("Āhihi-Kīna'u NAR," "Āhihi-Kīna'u," or "the NAR") is located on Maui's southern coast below Kīhei and Mākena. It was established in 1973 and is managed by the Division of Forestry & Wildlife ("DOFAW") under the Department of Land and Natural Resources ("DLNR"). The 1,238 terrestrial acres include portions of the last known volcanic activity of Haleakala, as well as anchialine pools, which harbor unique communities of plants and animals.

The remaining acreage (approximately 807 acres) includes marine waters, making 'Āhihi-Kīna'u the only natural area reserve containing a marine ecosystem. One of the justifications for including a marine component up to one-half mile offshore was to ensure an adequate buffer zone and enhance protection of the unique and sensitive features found in the near shore waters along the coastline. 'Āhihi-Kīna'u contains rare marine caves and some of Hawai'i's oldest and most precious coral reefs.

Because the NARS represent the most diverse and unique ecosystems in the State, the DLNR administrative rules contain many restrictions intended to provide these areas with the highest level of protection for state lands and waters. This submittal concerns four separate administrative rule violations by Peter Wood, Vice-President of Crystal Seahorse and captain of the motorized catamaran the *Shangri-La*, arising from activities occurring on August 18, 2005, and seeks administrative fines and reimbursement for fees and costs associated with the incident.

## II. FACTUAL BACKGROUND

On August 18, 2005, at approximately 10:30 a.m., DOFAW Ranger Joseph Fell-McDonald, who was patrolling the terrestrial portion of 'Āhihi-Kīna'u, observed the *Shangri-La* traveling south under motorized power along the Mākena coastline of Maui. (See Exhibit C). Ranger Fell-McDonald watched and also took pictures of the *Shangri-La* as it entered the northern region of the 'Āhihi-Kīna'u NAR and dropped anchor approximately fifty (50) feet from shore. (See Exhibit D). This is well within the NAR boundary, which extends seaward anywhere from 2,000-3,000 feet. (See Exhibit E). The *Shangri-La* then reversed, possibly in an attempt to secure the anchor, before stopping.

After anchoring, the *Shangri-La* lowered its dive step and prepared to disembark passengers to go snorkeling. Ranger Fell-McDonald observed what appeared to be a captain, later identified as Mr. Wood, one female crew member and approximately five to seven unidentified parties on board. Ranger Fell-McDonald then called the Maui Division of Conservation and Resource Enforcement ("DOCARE") of the DLNR to report the violation.

Simultaneously, Mika Kleme, a private citizen and volunteer with the non-profit Hawai'i Eco Nature Society, observed these same events from the shoreline. Realizing that the *Shangri-La* was illegally within the NAR, Mr. Kleme entered the water and swam out to the vessel. Mr. Kleme dove down to where the anchor had settled and took pictures of the damage the anchor and its chain had already inflicted on the coral heads. (See Exhibits F through J).

According to Mr. Kleme, he then surfaced and communicated to Mr. Wood that he was illegally anchored within a natural area reserve and pointed out the shore-based sign indicating the NAR boundary. Mr. Kleme informed Mr. Wood that he should depart the area immediately, taking care not to further damage the coral while removing the anchor. Mr. Wood told Mr. Kleme that he was unaware he was in the NAR and began making arrangements to depart.

Shortly thereafter, the *Shangri-La* motored forward, extricated its anchor, and departed 'Āhihi-Kīna'u. While this was occurring, Mr. Kleme, who was still in the water adjacent to the vessel, heard loud crunching sounds, presumably from the coral being further damaged as the anchor was removed. The *Shangri-La* then departed the NAR, proceeding south along the Mākena coastline. Mr. Kleme then reported the incident to DLNR staff and provided copies of his photos for the Department's use.

On Friday, September 2, 2005, investigating DOCARE Officer Randy DeCambra met with Mr. Wood at the Napili Plaza. At this meeting, Mr. Wood stated that he was the owner of the *Shangri-La* and was captaining the vessel on the day and time of the incident. He further stated that he was conducting a commercial tour at the time, at a rate of \$1,050/hour, with approximately 12 passengers on board. Mr. Wood told Officer DeCambra that he had been a boat captain on Maui since 1975 and considered himself an experienced mariner. He acknowledged, however, that he was unfamiliar with the island's southern coast, as the *Shangri-La* operates primarily from Lahaina in West Maui.

Mr. Wood further related to Officer DeCambra that, on the day in question, his Wailea-based clients had asked for a tour of the southern coast of Maui. He admitted operating under motorized power when entering the 'Āhihi-Kīna'u NAR and estimated that the vessel was in the NAR between 5-10 minutes. Mr. Wood stated that he was aware of the restrictions on damaging stony coral and that it was not his practice to anchor on coral. Mr. Wood further claimed that he had instructed two of his crew members to look for a sandy spot on which to deploy the anchor. Mr. Wood estimated his anchoring location as one hundred (100) feet from shore, which is still well within the NAR boundary. Finally, during the course of his interview, Mr. Wood admitted that he had made a "mistake," calling his actions "a stupid bonehead maneuver."

On August 31, 2005, Maui Division of Aquatic Resources ("DAR") staff Russell Sparks and John Mitchell, with direction to the exact location provided by Mr. Kleme, conducted a site inspection of the area allegedly impacted by the *Shangri-La's* anchor and chain.<sup>3</sup> Visible damage to the coral extended 31 meters along a north-south direction and included eleven (11) coral heads broken away from the substrate and numerous damage scars and fragmentation throughout the impact area. Damaged species included primarily *Porites lobata* (lobe coral) and *Pocillopora meandrina* (cauliflower coral). Both of these species are classified as members of the order *Scleractinia*, as evidenced by Exhibits K and L.<sup>4</sup> Toppled coral colonies were beginning to show signs of coral bleaching and tissue death. In addition, the numerous scars and small chips visible on other coral colonies had begun to change to a light brown color, indicating the growth of turf algae. Mr. Sparks and Mr. Mitchell attempted to save some of the damaged coral by reattaching three (3) of the coral heads with epoxy. During this site inspection, Mr. Sparks and Mr. Mitchell took photographs and made a diagram of the damaged area, included here as Exhibit M. This diagram indicates each broken coral head with a corresponding number.

Next, on September 21, 2005, Mr. Sparks and Mr. Mitchell returned to the damaged area, along with Skippy Hau of DAR and Matt Ramsey of DOFAW, to perform more extensive repair work.<sup>5</sup> They re-attached broken coral heads using a cement mixture and also installed two stainless steel pins for future monitoring purposes. In total, they re-attached four (4) coral heads and chronicled damage to five (5) other coral colonies. Finally, Mr. Sparks took GPS coordinates and drew a comprehensive map of the damaged area.

After the investigation, DOCARE coordinated with the Maui County Prosecutor's office to prosecute this incident. The criminal case against Mr. Wood concluded on January 10, 2006, with Mr. Wood entering a pre-trial plea agreement with the Maui prosecutor. The particulars of the deal were as follows: Mr. Wood entered a deferred acceptance of no contest plea ("DANCP") for the prohibited anchoring (HAR § 13-244-32) and unlawful motorized vessel (HAR § 13-209-4(11)) counts in exchange for the dismissal of the stony coral (HAR § 13-95-70) and unlawful commercial activity (HAR § 13-209-4(13)) counts. He received a fine of \$50 for the prohibited anchoring violation and \$100 for the unlawful motorized vessel violation. Mr. Wood was also assessed court costs totaling \$110. Finally, the court ordered that the citations to which Mr. Wood pleaded DANCP be expunged from his record on condition that he not be arrested or convicted within 90 days of the plea deal. In summary, Mr. Wood paid \$260 in fines and maintained an unblemished criminal record for his actions in 'Āhihi-Kīna'u on August 18, 2005. A person violating any of the laws or rules of the reserve system (e.g., HAR §13-209-4(11)) shall be guilty of a misdemeanor and "shall be fined not less than \$1,000" under HRS §195-8. (Emphasis added.) This was not done.

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<sup>3</sup> See Mr. Sparks August 31, 2005 memorandum, included here as Exhibit N.

<sup>4</sup> Exhibit K is a photocopied page from Corals of Hawai'i by Douglas Fenner (Mutual Publishing, 2005). Exhibit L is a photocopied page from Reef and Shore Fauna of Hawai'i, edited by Dennis M. Devaney & Lucas G. Eldridge (Bishop Museum Press, Hawai'i, 1977).

<sup>5</sup> See September 21, 2005 report titled "Shangrila Anchor Damage," Notes on Repairs, included here as Exhibit O.



Finally, DAR staff mailed Mr. Wood a certified letter, return receipt requested, on December 8, 2006, notifying him of the ongoing administrative investigation that is the subject of this submittal. (See Exhibit R). The return receipt was signed on December 9<sup>th</sup>. A copy of this submittal was sent to Mr. Wood, again by certified letter, on January 17, 2007 in advance of the scheduled meeting of the Land Board.

### III. Legal Authority

Mr. Wood and Crystal Seahorse violated State rules relating to natural area reserves, marine resources, and boating.

#### A. Natural Area Reserves

HAR § 13-209-4(11) prohibits operation in the NAR of “any motorized water vehicle of any shape or form in freshwater environments, including bogs, ponds, and streams, or marine waters, except as otherwise provided in the boating rules of the Department of Transportation, State of Hawai‘i.”<sup>6</sup>

HAR § 13-209-4(13) provides that “no person shall engage in commercial activities of any kind in a natural area reserve without a written special use permit from the board or its authorized representative.”

“Commercial activities” is defined in HAR § 13-209-2 as “the use of or activity on state land for which compensation is received by any person for goods or services or both rendered to customers or participants in that use or activity. Commercial activities include activities whose base of operations are outside the boundaries of the natural area reserve, or provide transportation to or from the natural area reserve.” “Compensation” includes, but is not limited to, monetary fees, barter, or services in-kind fees, barter or services in-kind.” HAR § 13-209-2.

Pursuant to HRS § 195-8(b), the Board is authorized to “set, charge, and collect administrative fines” for violations of any of the statutes and rules applicable to the NARS system. The administrative fines are as follows: “(1) [f]or a first violation, a fine of not more than \$2,500; (2) [f]or a second violation within five years of a previous violation, a fine of not more than \$5,000; and (3) [f]or a third or subsequent violation within five years of the last violation, a fine of not more than \$10,000.” HRS § 195-8(b). A criminal action against a person for violating the NARS statutes and rules does not preclude the State from pursuing administrative penalties, such as the ones at issue here. HRS § 195-8(c).

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<sup>6</sup> See Section IV, sub-part B of this submittal for a synopsis of the limited circumstances under which a motorized vessel can enter a NAR pursuant to the boating rules.

### *B. Marine Resources*

HAR § 13-95-70(a) states that “[i]t is unlawful for any person to take stony coral, or to break or damage any stony coral with a crowbar, chisel, hammer, or any other implement.” According to HAR § 13-95-1, “[b]reak” means “to hit with, or to **apply sufficient force to reduce to smaller pieces** or to crack without actually separating the pieces.” (Emphasis added.) “Stony coral” is defined as “any of a variety of invertebrate species belonging to the order *Scleractinia* characterized by having a hard, calcareous skeleton that are native to the Hawaiian islands.” HAR § 13-95-1.

HRS § 187A-12.5(c) provides the penalties for violations of HAR § 13-95-70 and other administrative rules relating to aquatic resources: “(1) [f]or a first violation, a fine of not more than \$1,000; (2) [f]or a second violation within five years of a previous violation, a fine of not more than \$2,000; and (3) [f]or a third or subsequent violation within five years of the last violation, a fine of not more than \$3,000.” HRS § 187A-12.5(e) also provides that, in addition to the fine for violating a rule, “a fine of **up to \$1,000 may be levied for each specimen of . . . aquatic life taken, killed, or injured**” in violation of aquatic statutes or rules. (Emphasis added.) “Aquatic life,” according to HRS § 187A-1, includes coral. HRS § 187A-12.5(a) also authorizes the Board “to recover administrative fees and costs . . . or payment for damages or for the cost to correct damages resulting from” a violation of the statutes and rules pertaining to aquatic resources. Finally, a criminal penalty for violating the aquatic resources statutes or rules does not preclude the State from recovering administrative fines, fees, and costs. HRS § 187A-12.5(f).

### *C. Boating*

HAR § 13-244-32(b) states that, “no person shall . . . anchor or moor any vessel equipped with mechanical means of propulsion on or in the ‘Āhihi-Kīna‘u ocean waters.” Exceptions are provided for the following scenarios: (1) if the person is engaged in rescue or law enforcement activities; (2) an emergency arises which requires that such action be taken to prevent loss of life, injury to persons or damage to property; or (3) the person is acting pursuant to a valid permit issued by DLNR. HAR § 13-244-32(b).

Pursuant to HRS § 200-14.5(a), the Board is authorized to “set, charge, and collect administrative fines and to recover administrative fees and costs . . . resulting from a violation of subtitle 8 of title 12 or any rule adopted thereunder.” The administrative fines are as follows: “(1) [f]or a first violation or a violation beyond five years of a previous violation, a fine of not more than \$5,000; (2) [f]or a second violation within five years of a previous violation, by a fine of not more than \$10,000; and (3) [f]or a third or subsequent violation within five years of the last violation, by a fine of not more than \$15,000.” HRS § 200-14.5(c). A criminal action against a person for violating the boating statutes or rules does not preclude the State from pursuing civil legal action to recover administrative fines, fees, and costs, or damages against that person. HRS § 200-14.5(d).

#### IV. Discussion

##### *A. Commercial Tour Operation in Natural Area Reserve*

For the Board to assess an administrative fine for a violation of HAR § 13-209-4(13), four elements must be present: (1) the responsible party must be a "person" as defined by the relevant HAR section; (2) the person must have engaged in "commercial activities"; (3) within the NAR; and (4) without a written use permit from the Board or its authorized representative. Based on direct observations by Ranger Fell-McDonald and Mr. Kleme, the Exhibits contained herein, and Mr. Wood's own statements, it is clear that Mr. Wood and, by extension, Crystal Seahorse was conducting a commercial tour in the 'Āhihi-Kīna'u NAR on the day in question. Staff recommends the maximum fine of \$2,500 be assessed against Crystal Seahorse.

First, Crystal Seahorse is a "person" pursuant to HAR § 13-1-2. This section states that, "[p]erson" means as appropriate individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies." Mr. Wood, as Vice-President and Director of Crystal Seahorse and as captain of the *Shangri-La*, was acting as a representative of Crystal Seahorse when he brought the commercially chartered vessel into the NAR.

Second, Crystal Seahorse was engaged in commercial activities. The *Shangri-La* is advertised on the Sailing Maui, Inc. website as a charter vessel, suited for private day charters, extended live-aboard cruises, and weddings.<sup>7</sup> In addition, Mr. Wood admitted to Officer DeCambra that he was giving a commercial tour at a rate of \$1050 per hour when he piloted the *Shangri-La* into the NAR.

Third, while on the commercial tour, the *Shangri-La* entered the NAR. The NAR boundary is located 2,000-3,000 feet offshore, while the *Shangri-La* was observed to motor to approximately 100-200 feet from the shoreline before anchoring. The location of the *Shangri-La* illustrated on the map attached as Exhibit E is based upon GPS coordinates of the coral damage taken by Maui DAR staff during assessment and mitigation actions after the incident.

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<sup>7</sup> Sailing Maui, Inc. is the booking company for the *Shangri-La* and another commercial vessel. According to the DCCA website, it shares the same officers (including Mr. Wood as President) and mailing address as Crystal Seahorse. See [www.sailingmaui.com](http://www.sailingmaui.com) for more information.



Fourth, Crystal Seahorse did not have a special use permit from DOFAW allowing it to conduct commercial activities within the NAR. According to DOFAW records, no special use permits have been issued for commercial activity in 'Āhihi-Kīna'u and no special use permit has been issued to Crystal Seahorse, Peter Wood, or Sailing Maui, Inc. Crystal Seahorse does have a commercial permit, issued by the Division of Boating and Ocean Recreation ("DOBOR") that explicitly limits the area in which the vessel is allowed to conduct commercial activities to "the KAA NAPALI SHOREWATERS and WEST MAUI ocean recreation management area." (See Exhibit A). The West Maui ocean recreation management area, according to HAR § 13-256-10, means "all ocean waters and navigable streams from the northeast boundary of Honolulu Bay to McGregor Point, Maui, Hawai'i . . . ." As can be seen from Exhibit U, 'Āhihi-Kīna'u is far south and well removed from the area for which the *Shangri-La* was permitted by DOBOR to commercially operate.

Taken together, these facts establish that Crystal Seahorse violated HAR § 13-209-4(13) and is subject to a fine up to \$2,500 pursuant to HRS § 195-8. Staff recommends the maximum fine of \$2,500 be imposed based on the following considerations. First, the company had a commercial permit that plainly limited the area in which it could give commercial tours. The fact that the *Shangri-La* was operating so far from the permitted area indicates either a surprising lack of awareness or a total disregard for the terms of the permit.<sup>8</sup> Second, the commercial permit states that the permittee agrees to abide by the state boating rules. As noted above, DOBOR's boating rules, like the NARS rules, prohibit operating, anchoring, or mooring within the 'Āhihi-Kīna'u NAR except under limited circumstances which are not applicable here. Mr. Wood, as a vessel captain, and Crystal Seahorse, as the registered owner of the *Shangri-La*, both bear particular responsibility for knowing and abiding by the boating rules, even if they were unaware of the natural area reserve (which has been in place since 1973) and its related rules (which became effective in 1981, and as amended in 2002). Ignorance of the law, as the saying goes, is no excuse. Third, 'Āhihi-Kīna'u is one of Hawai'i's last pristine resources and special attention must be given to preserving its natural beauty for future generations. The attributes that make 'Āhihi-Kīna'u so special – crystal blue waters, intact coral colonies, and bountiful wildlife – also render the area a prime location for commercial tour operations. Over the past few years, there has been a continued increase in the level of public use, and abuse, of the 'Āhihi-Kīna'u NAR. The Department's actions in removing illegal commercial kayak operators about a year before this incident received much press on Maui and statewide and demonstrated the Department's commitment to protecting the reserve from unpermitted activities. In imposing the maximum fine, the Board effectively confirms the message to the public that illegal commercial operations will not be tolerated and that the State takes seriously its mandate to protect 'Āhihi-Kīna'u.

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<sup>8</sup> It is worth noting that, according to the commercial permit, any violation of DLNR's boating or shore water rules by the permittee "may cause this permit to be terminated by the Department by written order of its representative, and the vessel or operation shall immediately cease activity." (See Exhibit A). Staff's recommendation of an administrative fine plus fees and costs, as opposed to permit revocation, represents a relatively minor penalty.

*B. Operation of a Motorized Vessel in a Natural Area Reserve*

To constitute a violation of HAR § 13-209-4(11), five elements must be present: (1) the "operation"; (2) of any motorized water vehicle of any shape or form; (3) in fresh or marine waters; (4) of a NAR; (5) except as provided by the boating rules. Based once again on eyewitness statements, the Exhibits attached to this submittal, and Mr. Wood's statements to Officer DeCambra, it is clear that Mr. Wood, in his capacity as captain of the *Shangri-La*, violated this rule. Staff recommends the maximum fine of \$2,500 for this violation.

First, Mr. Wood "operated" the *Shangri-La* for purposes of HAR § 13-209-4(11). Although "operate" is not defined in the NARS statutes or administrative rules, the boating rules defines the term as, "to navigate or otherwise use a vessel on or in the waters of the State." HAR § 13-240-5. Mr. Wood's act of captaining the vessel falls within both this definition and the ordinary meaning of the word.<sup>9</sup>

Second, the *Shangri-La* is a motorized water vehicle. Exhibit C shows the vessel making its way into the NAR under motorized power, as evidenced by the lack of a raised sail.

Third, the ocean component of the 'Āhihi-Kīna'u NAR is in "State marine waters," as defined in HRS §187A-1.5, where the boundary of the NAR extends up to a half mile offshore.

Fourth, for reasons previously established above, the *Shangri-La* was well within the boundaries of the 'Āhihi-Kīna'u NAR.

Fifth, Mr. Wood's actions did not fall within any of the exceptions provided by DLNR's boating rules. HAR § 13-244-32 allows for vessels to be within the marine waters of the 'Āhihi-Kīna'u NAR only if: "(1) the person is engaged in rescue or law enforcement operations; (2) an emergency arises which requires that such action be taken to prevent loss of life, injury to persons or damage to property; or (3) the person is operating, anchoring or mooring a vessel equipped with mechanical means of propulsion in or on the waters in accordance with the provisions of a permit issued by the chairperson of the board of land and natural resources." The DOCARE investigation, DLNR records, and Mr. Wood's statements indicate that the *Shangri-La*'s entry into the 'Āhihi-Kīna'u NAR was neither related to rescue or law enforcement activities, nor the result of an emergency, nor in accordance with a permit issued by the BLNR Chair.

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<sup>9</sup> WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, UNABRIDGED, defines "operate" as: "to perform a work or labor: exert power or influence: produce an effect."

These facts establish that Mr. Wood violated HAR § 13-209-4(11) and is subject to a fine up to \$2,500 pursuant to HRS § 195-8. Staff recommends the maximum fine owing to the following circumstances. First, Mr. Wood, as a boat captain with over 30 years of experience in Hawaiian waters, either knew or should have known that he was in the NAR. Staff finds it unlikely that Mr. Wood was not aware of the existence and location of the 'Āhihi-Kīna'u NAR despite its existence in Maui's coastal waters for over 30 years. In addition, as discussed above, recent enforcement events within the NAR have generated substantial publicity and it is unlikely that someone within the commercial boating community would not have at least some awareness of the existence of the NAR. Second, 'Āhihi-Kīna'u is the state's only NAR with a marine component and the significance of this cannot be overstated. All NARS enjoy, and should be accorded, substantial protection from the actions of the public. 'Āhihi-Kīna'u, however, is even more special, as a result of its unique terrestrial-marine composition, and should be protected accordingly. Staff therefore recommends imposing the maximum fine for this violation.

### *C. Damage to Marine Species*

In order for the Board to assess a fine for a violation of HAR § 13-95-70(a), three elements must be present: (1) a person must take, break, or damage; (2) stony coral; (3) with a crowbar, chisel, hammer, or any other implement. Here, Mr. Wood's anchoring of the *Shangri-La* broke at least eleven (11) stony coral specimens, as documented by the subsequent investigations by Maui DAR staff. Because of the significance of the resource involved and the length of time it takes for stony coral to regenerate, staff recommends the maximum fine of \$1,000 be imposed for this violation.

First, Mr. Wood's act of anchoring the *Shangri-La*'s unlawfully broke at least eleven specimens of stony coral. As previously set forth, HAR § 13-95-70(a) establishes three ways by which a person can unlawfully impact stony coral: by taking, by breaking, or by damaging. Here, the anchor and its chain provided force sufficient to dislodge eleven coral heads<sup>10</sup> from their calcareous bases. This constitutes a "break" pursuant to HAR § 13-95-1 because the coral heads were reduced to smaller pieces (i.e. the toppled head and the base). See Exhibits Q and R for visual evidence of this damage, as well as Exhibit M indicating the toppled heads.

Second, the coral damaged by Mr. Wood's actions meets the criteria of "stony coral." As previously established, the two species of coral damaged, *Pocillopora meandrina* and *Porites lobata*, both fall within the order *Scleractinia* and are native to the Hawaiian archipelago. (See Exhibits K & L).

Third, Mr. Wood damaged the stony coral in question with "implement[s]" – the anchor and its chain.

---

<sup>10</sup> The eleven damaged coral heads included eight (8) *Porites lobata* and three (3) *Pocillopora meandrina*. See Exhibit O.

The existence of all three of these elements establish that Mr. Wood violated HAR § 13-95-70(a) and is subject to a fine of up to \$1,000 pursuant to HRS § 187A-12.5(c). Due to the extensiveness of the damage and the lengthy growth cycle of the stony coral, along with the fact that Mr. Wood as a commercial captain should be aware of the restrictions on damaging stony coral, staff recommends the maximum fine of \$1,000 be levied for this violation.

In addition, HRS § 187A-12.5(e) allows the Board to levy fines of up to \$1,000 for each "specimen" of aquatic life injured by a violation of the aquatic regulations. A conservative view of the evidence based on the two investigations of the damaged area supports the conclusion that Mr. Wood broke eleven specimen of coral. "Specimen" is not defined within the statute or the administrative regulations. Webster's Third New International Dictionary, however, defines "specimen" as: "a particular single item, part, aspect, or incident that is typical and indicative of the nature, character, or quality of others in the same class or group." Based on numerous consultations with DAR biologists, staff believes it is reasonable to consider each coral *head* a "specimen" because each head is a single item in of itself.

Applying this methodology, staff recommends a fine of \$250 for each of the eleven coral heads (total - \$2,750) broken by the *Shangri-La's* anchor and chain.<sup>11</sup> This recommendation is based on the fact that Maui DAR staff were able to successfully re-attach some of the damaged specimen and subsequent monitoring indicates that at least some of the repaired heads are still living. Staff believes that this mitigating circumstance, viewed in light of the additional damage to the surrounding coral not being accounted for in this recommendation (fragmentation, scarring, etc.), makes \$250 per specimen a reasonable fine for this incident.

---

<sup>11</sup> Staff also notes that the eleven broken coral specimen estimate is extremely conservative based on the evidence of additional damage observed during the August 31 and September 21 investigations. Exhibit O shows, in addition to the individual heads that were broken, numerous instances of fragmentation, which could possibly constitute additional "breaking" for purposes of an even higher fine. Furthermore, Exhibits F through L and T through U show substantial scarring and chipping that could conceivably be considered "damage" pursuant to HAR § 13-95-1 and which could, therefore, similarly increase the total fine. In order to eliminate potential dispute regarding the fine, staff has elected to proceed with the most conservative calculation, counting only the coral heads that were actually broken off from the substrate.



*D. Anchoring in the NAR*

For the Board to assess fines for violations of HAR § 13-244-32(b), five elements must be present: (1) no "person"; (2) shall anchor; (3) any vessel equipped with mechanical means of propulsion; (4) on or in 'Āhihi-Kīna'u; (5) unless operating as part of a rescue/law enforcement activity, an emergency, or by virtue of a permit. Violations of this regulation subject the violator to a fine of up to \$5,000 for a first offense pursuant to HRS §200-14.5. The Board is also able to levy fines for the purpose of recovering administrative fees and costs from the responsible party. As discussed above, Mr. Wood violated these provisions when he anchored the *Shangri-La* within the 'Āhihi-Kīna'u boundaries. As such, Mr. Wood should be fined \$5,000 for violating HAR § 13-244-32(b).

First, Mr. Wood is a "person" according to the broad definition supplied by HAR §13-1-2. This regulation includes "appropriate individuals," and, thus, applies to Mr. Wood in his individual capacity. Second, as the pictures and witness statements indicate, Mr. Wood anchored the *Shangri-La* on the day in question by dropping the vessel's anchor so that it came into contact with the ocean floor. Third, as already established, the *Shangri-La* is equipped with mechanical means of propulsion. Fourth, and as discussed above, the *Shangri-La* was well within the 'Āhihi-Kīna'u NAR boundary when it anchored. Fifth, and again as discussed above, when operating Mr. Wood was neither conducting emergency nor rescue operations, there was no emergency mandating the *Shangri-La*'s presence in the NAR, nor was the vessel permitted to be anchored there.

In light of these facts, staff recommends that Mr. Wood be assessed the maximum fine of \$5,000 for violating HAR § 13-244-32(b). As a commercial captain, Mr. Wood is responsible for knowing the State's boating rules. Not only do these rules prohibit entry into the 'Āhihi-Kīna'u NAR but they also identify the prohibited area with a map. (See Exhibit S).<sup>12</sup> Furthermore, Mr. Wood was operating outside the geographic scope of the commercial permit and in violation of its conditions, which require that the company and its employees comply with the boating regulations. As Mr. Wood himself indicated, he has been a captain in Maui for approximately 30 years. It stands to reason that, despite the fact that he conducted his operations primarily in the Kaanapali/West Maui area, Mr. Wood should have been aware of the restrictions in place for 'Āhihi-Kīna'u based on the longevity of the reserve and the substantial attention it has received over the last few years. Finally, commercial vessels operating in 'Āhihi-Kīna'u has been an ongoing problem over the past few years. Levying the maximum fine for such a flagrant violation – a commercial tour occurring in the middle of the day – sends a signal to the public that such actions will not be tolerated.

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<sup>12</sup> Exhibit S, indicating the boundaries of the 'Āhihi-Kīna'u NAR, is an appendix to HAR § 13-244.



*E. Administrative Costs*

Both HRS 187A-12.5(a) and HRS § 200-14.5(a) provide for the recovery of administrative costs resulting from the violation of HAR § 13-95-70(a) and HAR § 13-244-32(b), respectively. Staff recommends that Mr. Wood be assessed administrative fees and costs in the amount of **\$3,554** associated with the investigation and rehabilitation activities necessitated by his actions. Here, DAR, DOCARE, DOFAW, and DOBOR worked cooperatively to investigate, assess, and mitigate the damage resulting from Mr. Wood's actions. These costs include staff time (labor), equipment use (boat, gasoline), and materials for coral restoration. The requested costs arguably underestimate the actual cost to the State of this incident, as they do not reflect the intrinsic value of the natural area reserve or the marine resources damaged by Mr. Wood's actions or the indirect cost associated with the unavailability of staff to work on other projects because of their involvement in responding to this incident. A complete breakdown of the fees and costs is included here as Exhibit T.

**V. Recommendation**

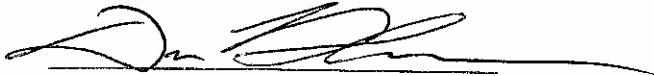
Staff recommends that the Board:

1. Fine Crystal Seahorse **\$2,500** for conducting a commercial tour in the 'Āhihi-Kīna'u NAR in violation of HAR § 13-209-4(13); and
2. Fine Peter Wood **\$2,500** for operating a motorized vessel within the 'Āhihi-Kīna'u NAR in violation of HAR § 13-209-4(11); and
3. Fine Peter Wood **\$5,000** for unlawfully anchoring a vessel equipped with mechanical propulsion within the marine waters of the 'Āhihi-Kīna'u NAR in violation of HAR § 13-244-32(b); and
4. Fine Peter Wood **\$1,000** for damaging stony coral in violation of HAR § 13-95-70(a); and
5. Fine Peter Wood **\$2,750** for damaging 11 specimen of stony coral in violation of HAR § 13-95-70(a) and pursuant to HAR § 13-95-70(e); and
6. Pursuant to HRS §§ 187A-12.5 and 200-14.5, assess administrative fees and costs against Peter Wood totaling **\$3,554** for expenses incurred by DLNR in investigating and remediating damages caused by his actions within the 'Āhihi-Kīna'u NAR.

June 8, 2007

Page 15 of 15

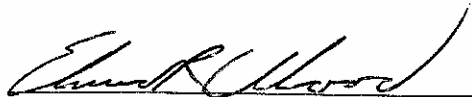
Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Dan Polhemus", written over a horizontal line.

Dan Polhemus, Administrator  
Division of Aquatic Resources

A handwritten signature in blue ink, appearing to read "Paul J. Conry", written over a horizontal line.

Paul Conry, Administrator  
Division of Forestry & Wildlife

A handwritten signature in black ink, appearing to read "Ed Underwood", written over a horizontal line.

Ed Underwood, Administrator  
Division of Boating and Ocean Resources

APPROVED FOR SUBMITTAL:

A handwritten signature in black ink, appearing to read "Allan A. Smith", written over a horizontal line.

Allan A. Smith, Interim Chairperson  
Department of Land and Natural Resources

**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**DIVISION OF BOATING AND OCEAN RECREATION**

COMMERCIAL OPERATING AREA USE PERMIT

**Renewal**

Permit No. C-01

0891C009024

Date: August 23, 2006

This permit authorizes **CRYSTAL SEAHORSE, LTD.** (hereinafter referred to as the Permittee) to conduct (describe commercial activities) **PASSENGER CARRIAGE (CATAMARAN) Vessel: "SHANGRI-LA"** Reg./Doc. 1095431 Exp. (04/07), ORMA# D4636, SHUTTLE: HA 1579 CP Exp. 08/06 ORMA# D4638, and HA 0576 CC Exp. 08/06 ORMA # D4637. On the ocean waters of the State of Hawaii located on the island of MAUI in the **KAANAPALI SHOREWATERS and WEST MAUI Ocean recreation management Area**, to commence on September 01, 2006 and expire on August 31, 2007 unless terminated for cause.

Copies of exhibits are submitted for review and the record:

- ☒ Vessel documentation (if applicable)
- ☒ Vessel certification (if applicable)
- ☒ Certificate of business liability insurance
- ☐ General Excise License
- ☐ Certificate of insurance covering thrill craft (jetskis, waverunner, etc.)
- ☐ Department of Land and Natural Resources Permit No. \_\_\_\_\_ (if applicable)
- ☐ Partnership, Joint venture, corporate exhibits, as applicable
- ☐ LAND BOARD CDUA/OTHER DOCUMENTATION

1. The Permittee agrees to abide by all applicable Federal and State laws and all boating and shore water rules promulgated by the Department of Land and Natural Resources (hereinafter referred to as the Department). Any violation of the provisions aforementioned laws or rules, in addition to any fines or penalties a court of law may cause this permit to be terminated by the Department by written order of its representative, and the vessel or operation shall immediately cease activity.

2. The Permittee agrees to operate the vessel or equipment described in this permit in accordance with applicable rules and regulations regarding passenger-carrying and commercial vessels.

3. When applicable, the Permittee agrees to present proof, upon request, of the Coast Guard certification for the vessel(s) described to the Department, its officers or agents.

4. The fee for this commercial operating area use permit will be the fee of \$ 75.00 per month or 3% of the vessel's or operation's gross receipts, whichever is the greater.

5. The fee stated above is due and payable in advance of the first day of the month in the Division of Boating and Ocean Recreation office. Not later than 30 days following the end of the month, the Permittee will submit to Division of Boating and Ocean Recreation a report of gross receipts for the month plus payment of any additional amount required by the percentage of the gross receipts specified in paragraph 4. **UNLESS PAID ON TIME, THIS PERMIT WILL AUTOMATICALLY EXPIRE.**

6. During scheduled events, as evidenced by a marine events permit authorized by the State or U.S. Coast Guard, vessel(s) or operations under commercial operating area use permits may be required to adjust their schedules for use of an ocean recreation management area, or temporarily cease activity as directed by the Department.

7. The Permittee agrees to notify the Department in writing of any changes concerning ownership, address, vessel inventory or operator(s) of a vessel(s) within 7 days of the date of change. Failure to promptly notify the Department of any changes may cause this permit to be terminated by the Department.

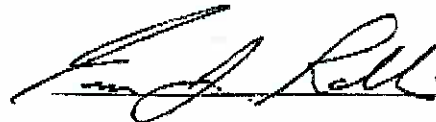
8. The Permittee shall at all times use due care for public safety and shall defend, hold harmless and indemnify the State of Hawaii, its officers, agents and employees from and against all claims or demands, including claims for property damage, personal injury or death arising out of or incident to the operation of said vessel or operation.

9. The permit charges are for the privilege of operating a commercial vessel or operation in the designated ocean recreation management area in the manner stated above or within the ocean recreation management rules. Any other use of harbor/ramp facilities or services must be requested and approved separately.

10. The duration of this commercial operating area use permit shall not exceed the period of one year from the date of commencement.

I AGREE TO THE TERMS, CONDITIONS AND CHARGES:

CRYSTAL SEAHORSE, LTD



Permittee

Inca J. ROBBIN, President

PMB 307-5095 Napilihaui St.  
Suite 109 B

ADDRESS

Lahaina, HI 96761  
City/State/Zip

665-0077

669-0133

B. PH.

H. PH.

FAX Ph.# Cellular Ph.#

Pager Ph. #

STATE OF HAWAII

DEPARTMENT OF LAND & NATURAL RESOURCES

DIVISION OF BOATING & OCEAN RECREATION

BY: 

(Vessel owner, if not Permittee)

Address

CITY/STATE/ZIP

RECEIPT NO.

DATE: August 23, 2006

AMOUNT RECEIVED: \$ ~~250.00~~

MLA 4475

STATE OF HAWAII  
DEPT. OF LAND & NATURAL RESOURCES  
OFF BOATING & OCEAN RECREATION

APPLICATION FOR COMMERCIAL USE PERMIT DIVISION  
AT Kaanapali SMALL BOAT HARBOR

C-01

LEASE TYPE OR PRINT

Name Crystal Seahorse, LTD Social Security No. 99-0188681 (Federal Tax ID No.)  
Mailing Address PMB 307 5095 Napilihau St. STE 109-B, Lahaina, HI 96761  
Telephone No. Business 665-0077 Residence 669-0133

Name of Vessel Shangri-La Reg. or Doc. Expiration Date Aug. 31, 2001  
Registration No. N/A Documentation No. ON 1095431

Ownership of Vessel: (Proof of ownership must be presented at time of application)

Principal Owner Crystal Seahorse, LTD Phone No. 808 665-0077

Mailing Address PMB 307 5095 Napilihau St. STE 109-B, Lahaina, HI 96761

Co-owner N/A Phone No. \_\_\_\_\_

Mailing address \_\_\_\_\_

Vessel Size: L.O.D. 64.0 ft. L.O.A. 64.0 ft Beam 31.0 ft Draft 7.0 ft.

Commercial Activity Vessel used for Tour vessel -Coastwise

Coast Guard Certificate: Passenger Cap 49 Re-Cert. Date Due \_\_\_\_\_

Master of Vessel 1. Peter R. Wood Tonnage Lic. 100 Type Master  
2. William Wood Tonnage Lic. 100 Type Master

(For additional Masters, full or part-time, use back of sheet)

This Vessel 1. Has a berth, No. N/A At \_\_\_\_\_ Harbor

2. Is moored/Anchored on Maui At Mala Boat Ramp  
Island Location

3. Is kept on a trailer at \_\_\_\_\_

I Purchased X Leased \_\_\_\_\_ Other \_\_\_\_\_ -the aforementioned

Vessel on June 7, 2000 From Gold Coast Yachts

The vessel described on this application is free of all liens, mortgages or other encumbrances except as follows person/institution holding security interests:

Name N/A Address N/A

I understand that pursuant to the Small Boat Harbors Rules, I must inform the Harbor Agent within seven (7) days of any sale or lease of the vessel described in this application. I also understand that if I violate any of the provisions of the aforementioned rules, in addition to any fines or penalties a court of law may impose, my permit to operate a vessel commercially in Kaanapali harbor may be revoked. The information given by me, the applicant, is true, correct and completed to the best of my knowledge and belief.

Date 8/30/06

Date 8/30/06

[Signature]  
SIGNATURE OF APPLICANT

[Signature]  
HARBOR ATTENDANT




**Certificate of Good Standing**

- Login
- Search
- Shopping Cart
- Authenticate a COGS

**NOTE**

If you want to purchase a Certificate of Good Standing, search for the company using the search page. Once you locate the company, view the company details. If the company/entity is in good standing, you will be able to purchase the COGS on that page.



Click Live Help icon to begin chat

**Business Information**
**Purchase a Certificate of Good Standing for this business:**

Electronic COGS **\$7.50**  
 Print unlimited copies using your computer.  
 Printed COGS **\$7.50 each**  
 Mailed to you or available for pickup.

**General Information**

<b>Master Name</b>	CRYSTAL SEAHORSE, LTD.
<b>Business Type</b>	Domestic Profit Corporation
<b>File Number</b>	93604 D1
<b>Status</b>	Active
<b>Purpose</b>	TOUR VESSEL
<b>Place Incorporated</b>	Hawaii UNITED STATES
<b>Incorporation Date</b>	Nov 30, 1993
<b>Mailing Address</b>	PMB 307, 109 B 5095 NAPILIHAI ST LAHAINA Hawaii 96761 United States of America
<b>Term</b>	PER
<b>Agent Name</b>	INCA J ROBBIN
<b>Agent Address</b>	PMB 307, 109 B 5095 NAPILIHAI ST LAHAINA Hawaii 96761 United States of America

**Annual Filings**

Filing Year	Status
2006	Processed
2005	Processed
2004	Processed
2003	Processed
2002	Not Required
2001	Processed
2000	Processed
1999	Processed

**Trade Names, Trademarks and Service Marks**

View Trade Names, Trademarks and Service Marks for  
 CRYSTAL SEAHORSE, LTD.

**Stocks**

Date	Class	Shares	Paid	Par	Stock
------	-------	--------	------	-----	-------

			Shares	Value	Amount
Nov 30, 1993	COMMON	100,000	1,000	1.	

**Officers**

Name	Office	Date
ROBBIN, INCA J	P/D	Aug 19, 1999
WOOD, PETER R	V/S/I/T/D	Aug 19, 1999

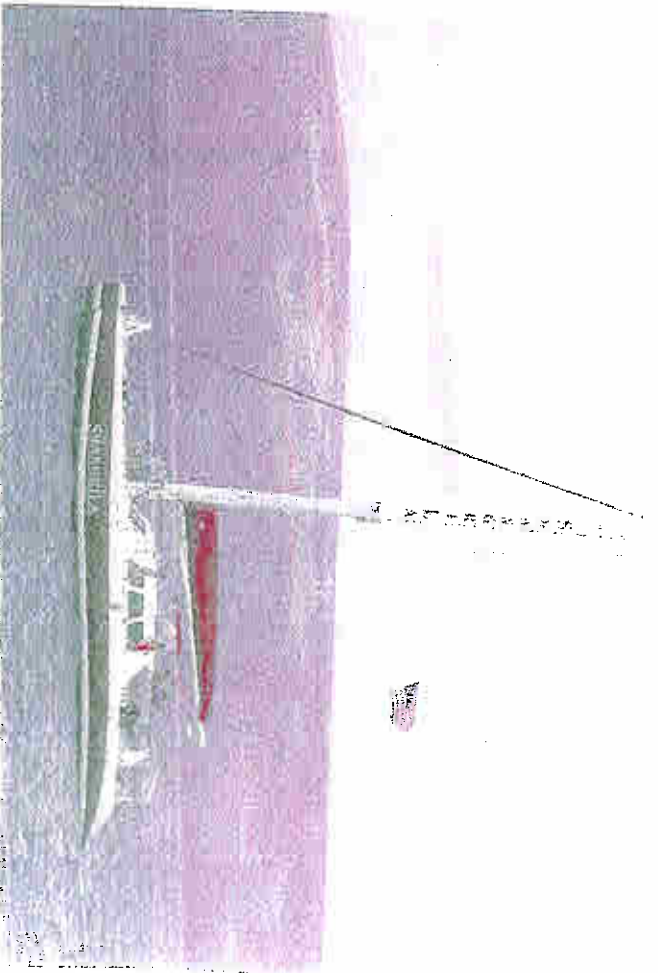
**Transactions**

Date	Code	Remarks
Nov 17, 2004		Change status by Admin
Nov 17, 2004		Change status by Admin
Nov 12, 2004	Reinstatement	Reinstatement
Sep 24, 2004	Involuntary Dissolution	Involuntary Dissolution
Nov 30, 1993	Articles of Incorporation	ARTICLES OF INCORPORATION

#15

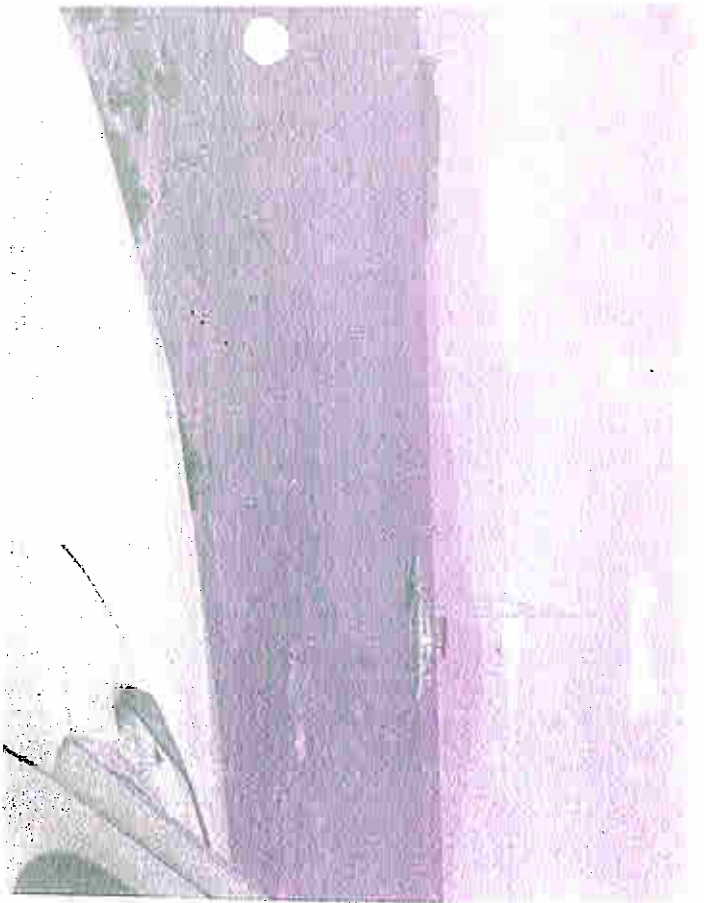


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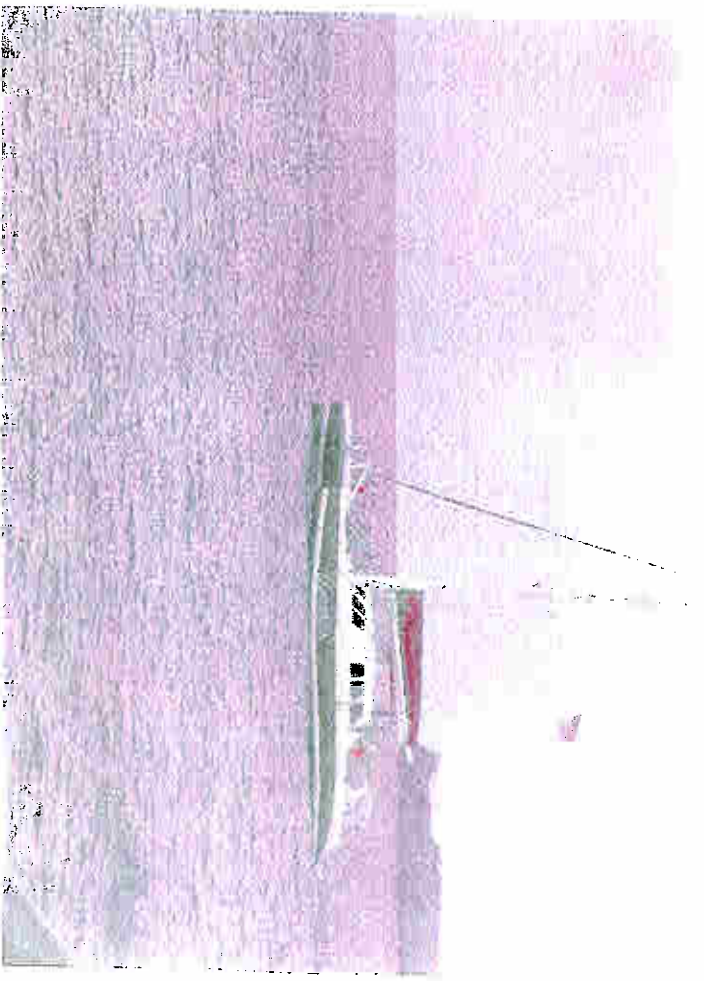


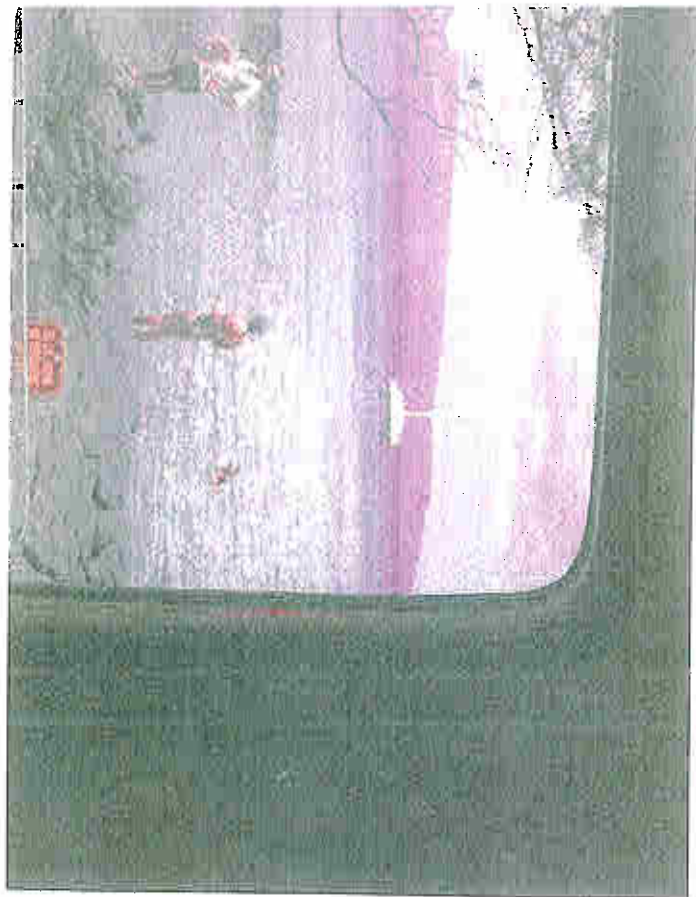


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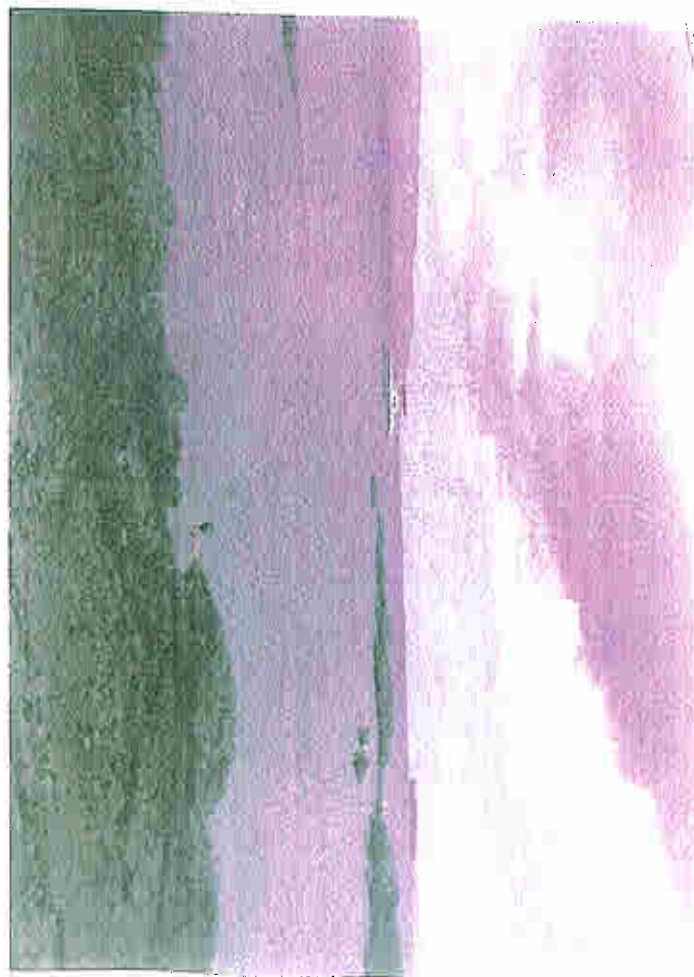


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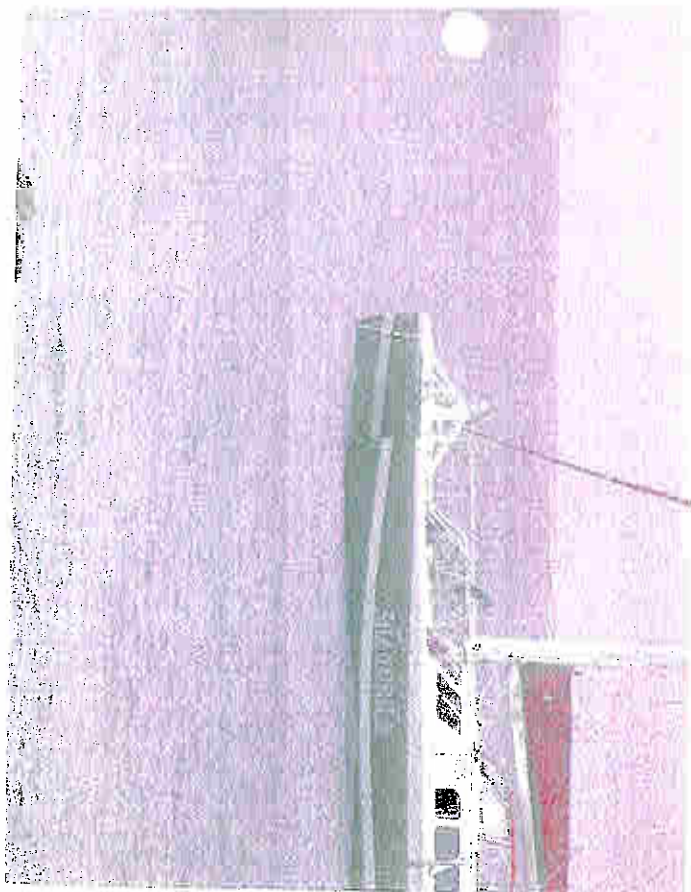


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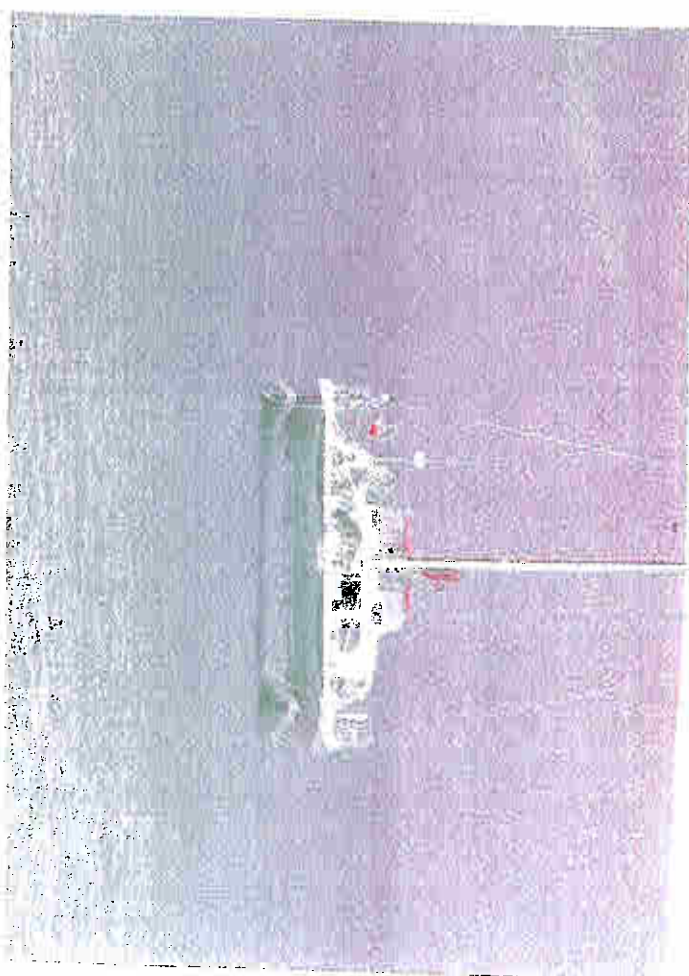
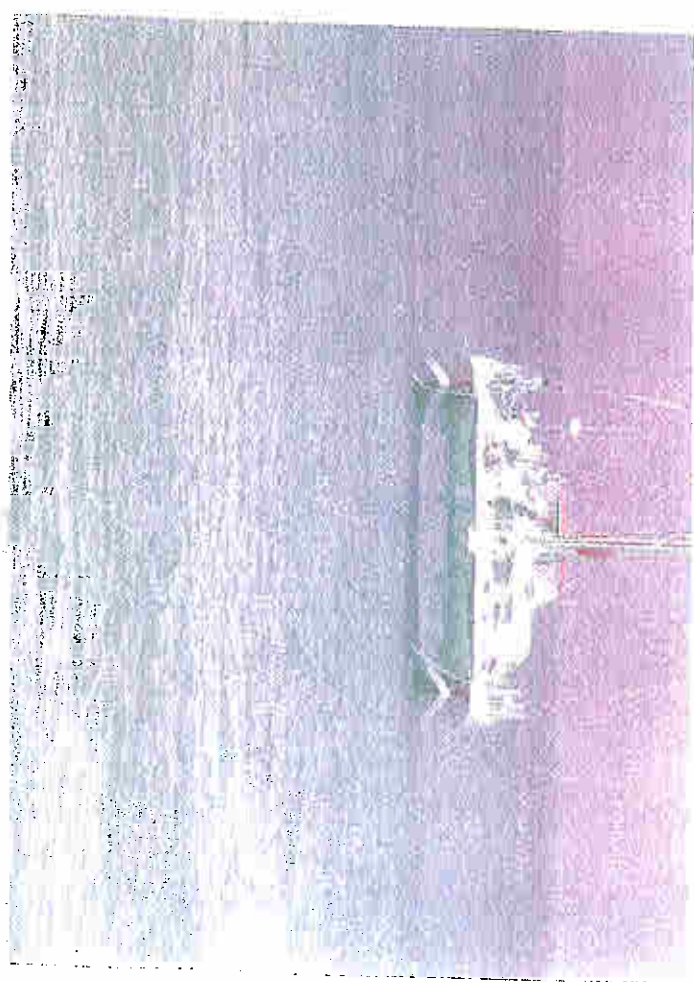
EXHIBIT D



# 35

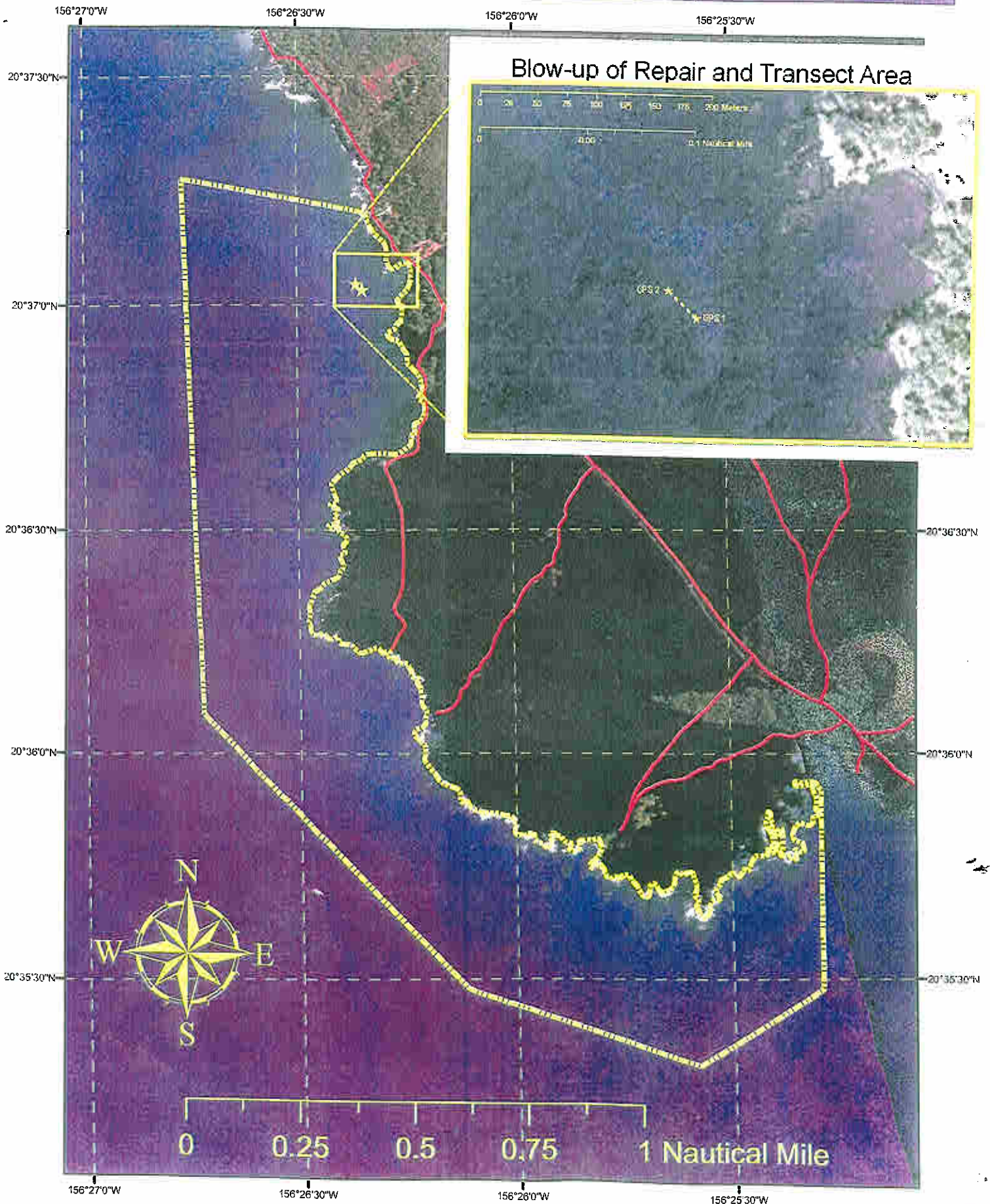


# B6





# EXHIBIT E: ANINI KINOHAKU NAR Showing Location of Violation

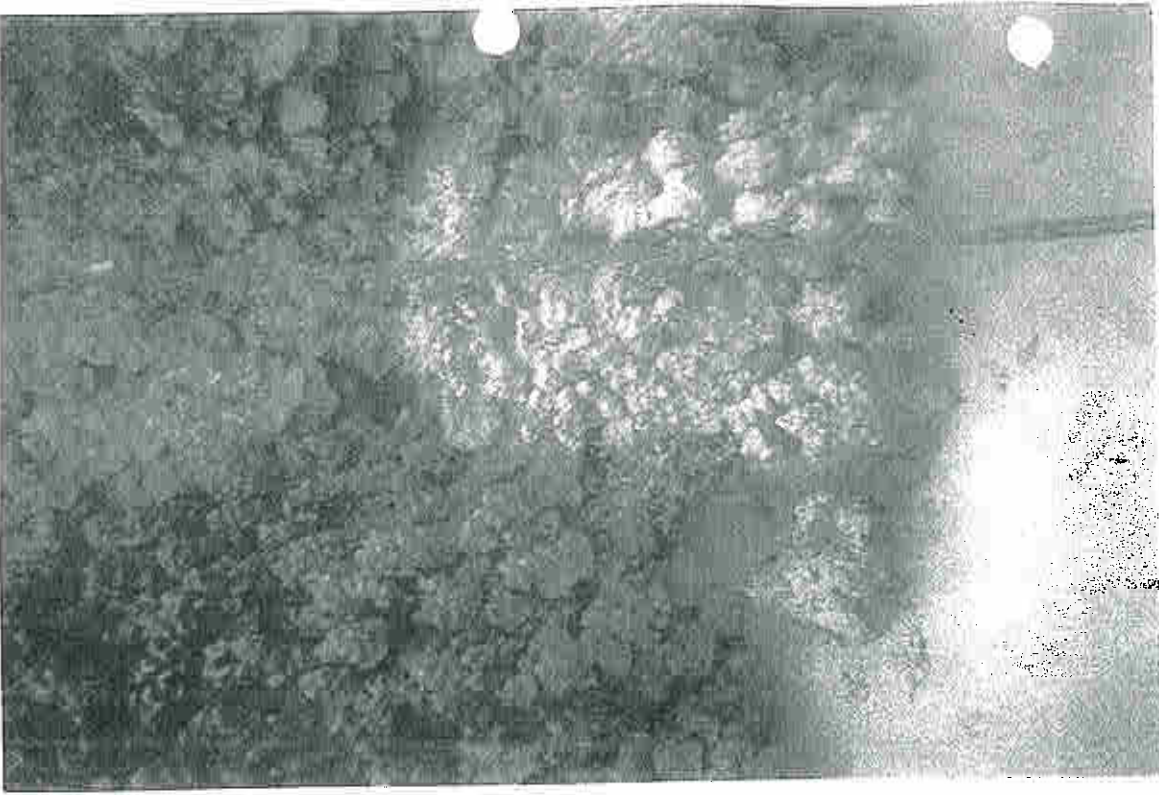




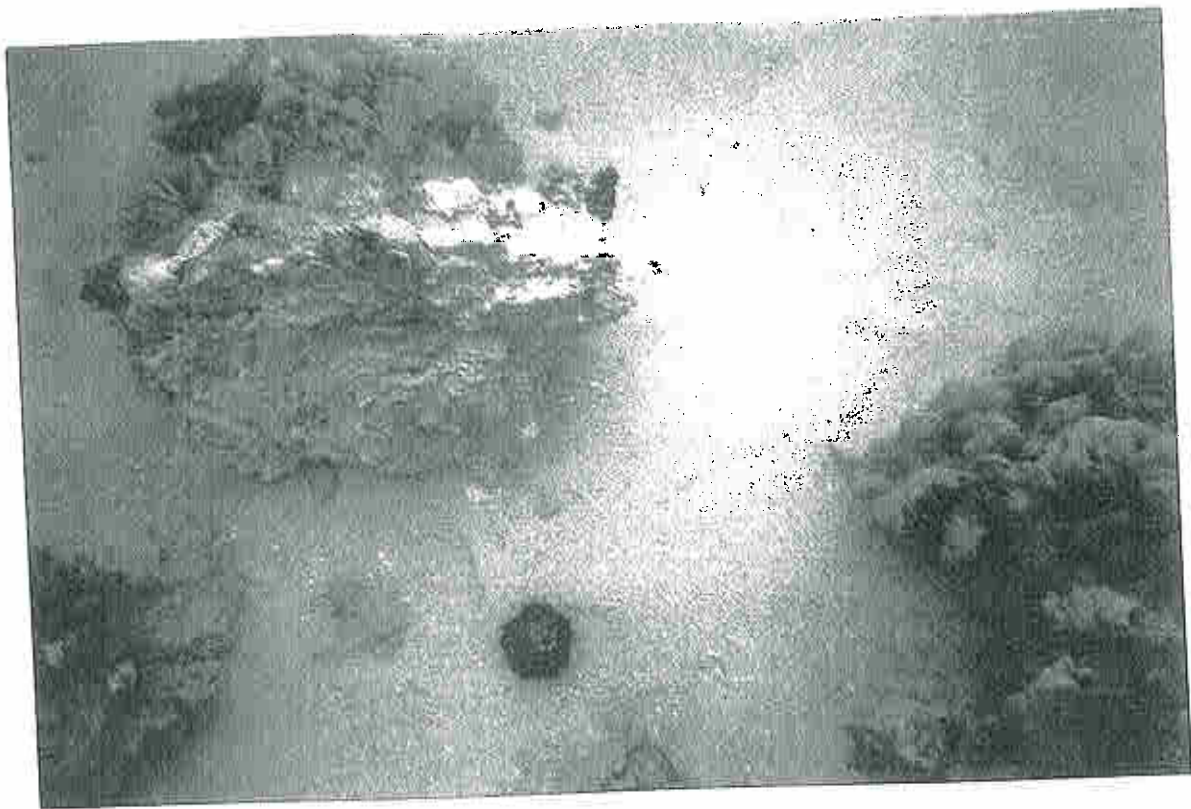
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EXHIBIT F



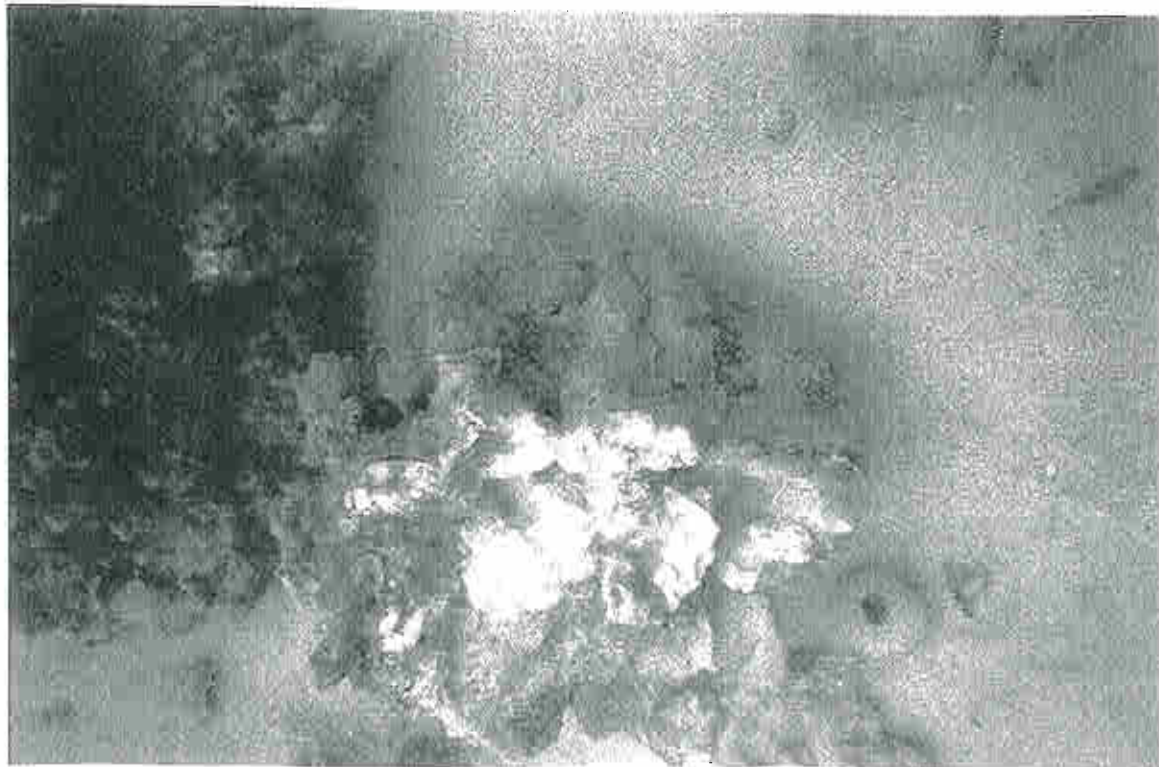


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#7





#8

EXHIBIT I

2/11



2/11



2/11



## TAXONOMY OUTLINE

This is a taxonomic outline of the species covered in this book. Note that the order is different from that used later in the book, where an attempt was made to group similar-looking species. Within a genus, species are listed alphabetically. The page numbers next to each species indicates where information on it can be found. Another way to find species is by using the Coral Directory, in which species are shown in small pictures and ordered by abundance and by genus. Species may also be looked up in the alphabetical listings in the Index.

### Phylum Cnidaria

#### Class Anthozoa

#### Subclass Zoantharia or Hexacorallia

##### Order Scleractinia

##### Family Astrocoeniidae

*Madracis pharensis*\*, 41

##### Family Pocilloporidae

*Pocillopora damicornis*, 44

*Pocillopora eydouxi*, 41

*Pocillopora ligulata*, 43

*Pocillopora meandrina*, 42

*Pocillopora molokensis*, 43

##### Family Acroporidae

*Montipora capitata*, 48

*Montipora dilatata*, 46

*Montipora flabellata*, 49

*Montipora incrassata*, 45

*Montipora patula*, 50

*Montipora turgescens*, 47

*Acropora cytherea*, 51

*Acropora humilis*, 53

*Acropora nasuta*, 53

*Acropora paniculata*, 52

*Acropora valida*, 54

##### Family Poritidae

*Porites* cf. *annae*\*, 36

*Porites* cf. *bernardi*, 40

*Porites brighami*, 35

*Porites compressa*, 32

*Porites duerdeni*, 33

*Porites lichen*, 39

*Porites lobata*, 30

*Porites lutea*\*, 31

*Porites monticulosa*\*, 38

*Porites rus*, 37

*Porites solida*, 34

*Porites* cf. *studer*, 31

##### Family Siderastreae

*Psammocora explanulata*, 72

*Psammocora haimeana*, 76

*Psammocora nierstraszi*, 74

*Psammocora stellata*, 73

*Psammocora superficialis*\*, 75

*Psammocora verrilli*, 76

*Coscinaraea wells*, 71

##### Family Agariciidae

*Pavona duerdeni*, 62

*Pavona maldivensis*, 61

*Pavona varians*, 63

*Leptoseris foliosa*\*, 68

*Leptoseris hawaiiensis*, 66

*Leptoseris incrustans*, 65

*Leptoseris mycetoseroides*, 64

*Leptoseris papyracea*, 70

*Leptoseris scabra*, 67

*Leptoseris tubulifera*, 69

*Gardineroseris planulata*, 55

##### Family Fungiidae

*Cycloseris vaughani*, 79

*Diaseris distorta*, 81

*Diaseris fragilis*, 80

*Fungia granulosa*\*, 78

*Fungia scutaria*, 77

##### Family Faviidae

*Leptastrea bewickensis*\*, 57

*Leptastrea pruinosa*\*, 59

TABLE I  
ADEQUATELY DESCRIBED *SCLERACTINIAN CORALS* WITH DOCUMENTED  
PRESENCE IN SHALLOW HAWAIIAN WATERS

**Acroporidae**

- Acropora paniculata* Verrill, 1902
- Montipora dilatata* Studer, 1901
- Montipora flabellata* Studer, 1901
- Montipora patula* Verrill, 1864
- Montipora verrilli* Vaughan, 1907
- Montipora verrucosa* (Lamarck, 1816)

**Agariciidae**

- \*\*\* *Leptoseris hawaiiensis*, Vaughan, 1907
- Leptoseris incrustans* (Quelch, 1886)
- Leptoseris papyracea* (Dana, 1846)
- \* *Leptoseris scabra* Vaughan, 1907
- \* *Leptoseris tubulifera* Vaughan, 1907
- Pavona duerdeni* Vaughan, 1907
- Pavona varians* Verrill, 1864
- Pavona* (*Pseudocolumnastraea*) *pollicata* Wells, 1954

**Balanophylliidae**

- \*\* *Balanophyllia* spp. cf. *B. affinis* (Semper, 1872) and *B. hawaiiensis* Vaughan, 1907

**Dendrophyllidae**

- + *Tubastraea coccinea* Lesson, 1831

**Favidae**

- Cyphastrea ocellina* (Dana, 1846)
- Leptastrea hottae* (Milne-Edwards and Haime, 1850)
- Leptastrea purpurea* Dana, 1846

**Fungiidae**

- Cycloseris fragilis* (Alcock, 1902)
- Cycloseris hexagonalis* (Milne-Edwards and Haime, 1849)
- Cycloseris vaughani* (Boschma, 1923)
- Fungia* (*Pleuractis*) *scutaria* Lamarck, 1801

**Pocilloporidae**

- Pocillopora damicornis* (Linnaeus, 1758)
- Pocillopora eydouxi* Milne-Edwards and Haime, 1860
- Pocillopora ligulata* Dana, 1846
- Pocillopora meandrina* Dana var. *nobilis* Verrill, 1864
- Pocillopora molokensis* Vaughan, 1907

**Poritidae**

- Porites brighami* Vaughan, 1907
- Porites compressa* Dana, 1846
- Porites duerdeni* Vaughan, 1907
- Porites evermanni* Vaughan, 1907
- Porites lichen* Dana, 1846
- Porites lobata* Dana, 1846
- Porites pukoensis* Vaughan, 1907
- \* *Porites studeri* Vaughan, 1907
- Porites* (*Synaraea*) *convexa* Verrill, 1864
- Porites* (*Synaraea*) *irregularis* Verrill, 1864

**Siderastreidae**

- Coscinaraea ostreaeformis* Van der Horst, 1922

**Thamastreidae**

- Psammocora nierstraszi* Van der Horst, 1922
- Psammocora verrilli* Vaughan, 1907
- Psammocora* (*Stephanaria*) *stellata* Verrill, 1864

\* Confined to deep reefs.

+ Ahermatypic (non-reef-building) corals.

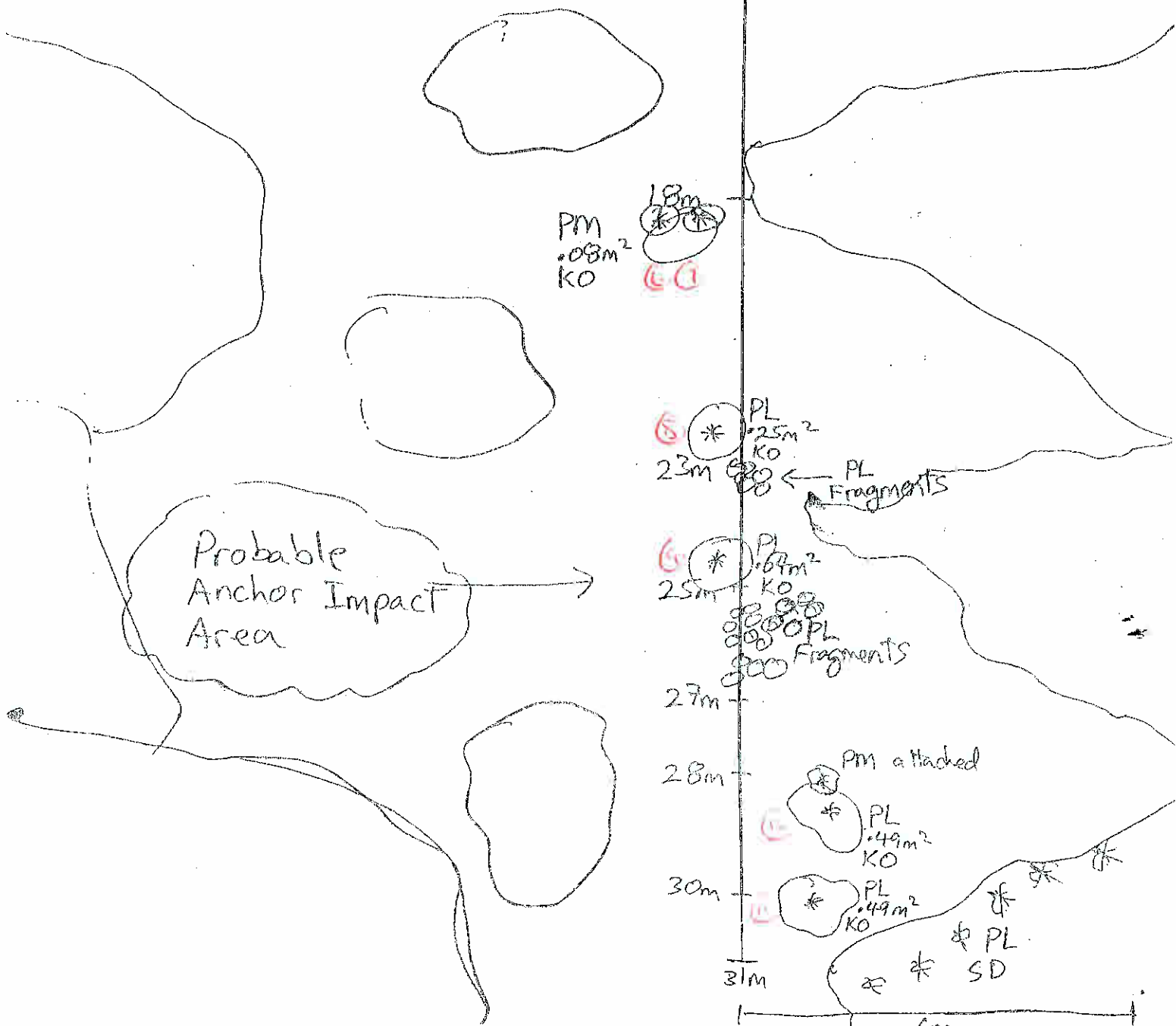
\*\*\* Ahermatypic for most of its depth range, but may contain zooxanthellae algae at depths above 150 m.



the inspection on 12/29/2005  
Kauai Bay, Ahihi-Kiruna NARS  
water Depth 28'  
Patchy Coral & Sand Habitat

1 - Lobe Coral  
Porites lobata

D- Scarred & Damaged





COPY

STATE OF HAWAII  
Department of Land and Natural Resources  
Division of Aquatic Resources-Maui Office  
130 Mahalani Street  
Wailuku, HI 96793  
(808)243-5294

August 31, 2005

Memorandum

To: Randy DeCambra, DOCARE Maui  
Through: Randy Awo, DOCARE Maui District Chief  
From: Russell Sparks, Education Specialist *RS*  
Subject: Site Inspection of Ahihi Kinau Anchor Damage

On Monday, August 29, 2005, John Mitchell (DAR Coral Reef Technician) and myself conducted a site inspection on the area that the vessel Shangri-la reportedly dropped her anchor. I spoke with Joe Fell-McDonald, NARs Ranger regarding the incident, and he referred me to the member of the public (Miquee) who witnessed the anchor damage and who took underwater photos of the anchor and anchor chain that caused the damage. Miquee met us at Kanahena Bay in the Ahihi Kinau NARs and led us out to the site of the anchor damage.

The area that the anchor was dropped was on the southern edge of a medium sized sand patch. The visible damage to the coral reef extends for 31 meters along a north to south direction. The habitat in this area is patchy coral reef consisting of lobe coral (*Porites Lobata*), cauliflower coral (*Pocillapora Meandrina*), and a few crustose species of *Montipora* coral. Eight chunks or entire mounds of lobe coral (*P. lobata*) were toppled over. These pieces ranged in size from .1 square meters to .64 square meters. In addition there was numerous damage present to some of the larger pieces of *P. lobata* (chips, broken pieces, and scratches). Several colonies of cauliflower coral (*P. meandrina*) were also busted up and/or knocked off of the substrate. In one location a section of *P. lobata* was shattered in to numerous pieces about .04 square meters in size.

The coral colonies that had been knocked over were beginning to show signs of coral bleaching and tissue death. The amount of bleaching we observed was consistent with corals that have been lying on their side for approximately 7 days. In addition, the numerous scars and small chips were beginning to turn light brown as turf algae started to grow. This is also what would be expected after approximately 7 days. In one location we observed 4 large chunks and several small shattered pieces of *P. lobata*. This is likely the area that the anchor directly impacted the reef. Small scars and chipped coral were present up to 6 meters eastward of the initial anchor impact area. The large chunks of *P.*

EXHIBIT N

*lobata* that were knocked over were likely pulled over as the wind pushed the boat to the north and the anchor chain began to straighten out around these coral mounds. The damage that we observed in the northern end of the area was consistent with the anchor chain bouncing up and down on the reef below. This area had some smaller *P. meandrina* colonies that were knocked over, and some scares and broken chips present on the large *P. lobata* colonies. This area has damage that extends for a distance of 7 meters to the east.

A quick attempt was made to save some of the damaged coral. We used a small amount of Z-spar epoxy to attach some of the *P. meandrina* back to the substrate. We also used some of the z-spar to try to secure the larger *P. lobata* heads that we were able to turn back over and reposition onto hard substrate. It is likely, however, that those lobe coral heads will be knocked back over by ocean swells. Further restoration efforts may be necessary if those coral heads are going to be permanently secured to the substrate.

A rough sketch of the damaged area and some representative photos are attached to this memo. Please let me know if you have any questions or if any of our findings need clarification.

Enclosures:

C: Francis Oishi, DAR Acting Administrator  
Alton Miyasaka, DAR Acting Program Manager  
Athline Clark, DAR Acting Program Manager  
Bill Evanson, Maui NARs Manager



COPY

Shangrila Anchor Damage  
Notes on Repairs 9/21/2005

Kanahena Bay, Ahihi Kinau NARs

Repair work was started at 8:30am

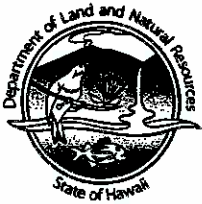
DLNR staff involved in the repair work included John Mitchel (DAR-RCUH) and Russell Sparks (DAR) as divers, Skippy Hau (DAR) as the surface support and cement mixer, and Matt Ramsey (DOFAW-NARs) as surface support and snorkeling assistant.

Cement mix consisted of Portland cement, Plaster of Paris and saltwater. Approximate mixture was 1 part Plaster of Paris to 10 parts cement, with water added to make a putty consistency. Mixture was put together in a 5 gal bucket and a cordless electric drill was used with a special paddle tool to rapidly mix everything together with the water.

Damaged coral heads and the substrate were prepared by scrapping all turf algae and other growth off with a hand held gardening hoe and a wire brush. One or two half buckets of cement was dumped onto the reattachment spot. The coral was then lifted into place and set into the cement mix. Left over cement and some pieces of rubble were then pushed in along the side of the reattached coral head.

A total of four *Porites lobata* heads were reattached to the substrate. In addition the locations of 3 previously reattached (8/29/2005) *Pocillopora meandrina* heads were inspected and recorded along a permanently marked transect line. Two permanent stainless steel pins were installed to allow future monitoring of the reattached corals in comparison to four *Porites lobata* control heads, and two *Pocillopora meandrina* control heads. The pins are exactly 30.4 meters apart. The pins are at  $20^{\circ} 37.033' \text{ N}$ ,  $156^{\circ} 26.348' \text{ W}$  for the southernmost pin, and  $20^{\circ} 37.046' \text{ N}$ ,  $156^{\circ} 26.362' \text{ W}$  for the other pin. The exact location of each repaired coral and each control coral is noted along the transect line running from the southernmost pin at a heading of 300 degrees (attached map).

Coral Repair work was completed at 10:50am



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**DIVISION OF AQUATIC RESOURCES**  
1151 PUNCHBOWL STREET, ROOM 330  
HONOLULU, HAWAII 96813

PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
DEPUTY DIRECTOR - LAND

DEAN NAKANO  
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS  
WATER RESOURCE MANAGEMENT

December 6, 2006

**CERTIFIED MAIL/RETURN RECEIPT**

Peter Wood  
C/o Crystal Seahorse, Ltd.  
PMB 307  
5095 Napilihau St. #109B  
Lahaina, Hawai'i 96761

**SUBJECT: Alleged Prohibited Activities in the 'Āhihi-Kīna'u Natural Area Reserve,  
Maui on August 18, 2005**

Dear Mr. Wood,

This letter is to inform you that the Department of Land and Natural Resources ("the Department") is currently reviewing an incident that occurred on August 18, 2005 involving alleged prohibited activities within the 'Āhihi-Kīna'u Natural Area Reserve ("NAR"). The purpose of this investigation is to determine whether the Department will proceed with an administrative enforcement action, which may include the assessment of administrative fines, recovery of administrative costs, or remediation.

The alleged violations are as follows:

- (1) unlawful operation a motorized vessel within the 'Āhihi-Kīna'u Natural Area Reserve in violation of Hawai'i Administrative Rule ("HAR") § 13-209-4(11);
- (2) unlawful commercial activities without a permit within the NAR in violation of HAR § 13-209-4(13);
- (3) unlawful anchoring within the NAR in violation of HAR § 13-244-32; and
- (4) unlawful breaking and/or damaging stony coral in violation of HAR § 13-95-70(a).

These violations are alleged to have been committed either by you in your capacity as captain of the Shangri-La or by Crystal Seahorse, Ltd., holder of a Commercial Operating Area Use Permit for the same vessel.

Enf. Action #DAR-MA-06-01

**EXHIBIT P**

The Department will notify you if and when the matter will be scheauled for a meeting before the Board of Land and Natural Resources. Meetings are typically held on the second and fourth Fridays of the month.

Please call Blaine Rogers of the Division of Aquatic Resources at (808) 587-0594 or at [james.b.rogers@hawaii.gov](mailto:james.b.rogers@hawaii.gov) should you have any questions regarding this matter.

Very truly yours,



Dr. Dan Polhemus, Administrator  
Division of Aquatic Resources

Cc: DOCARE  
DOBOR  
DOFAW  
Chariman Peter Young

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Peter Wood  
c/o Crystal Seahorse Ltd.  
PMB 307  
5095 Napilihau Street, #109B  
Lahaina, HI 96761

2. Article Number

(Transfer from service label)

7001 2510 0002 7578 3718

PS Form 3811, August 2001

Domestic Return Receipt

102595-01-M-03

A. Signature

x *P. Kuman*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

*P. Kuman*

C. Date of Delivery

*12/9/06*

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail

☐ Registered ☐ Return Receipt for Merchandise

☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes



Thurston Anchor Damage  
Kauai Bay, Aiea Kineu NAR  
Site Inspection: 8/29/05  
Photos By: John Mitchell



## Patchy Porities Lobata Dominated Reef



P. lobata  
Knocked Over

Fragments at the  
Anchor Impact Area



Chipped and Broken Corals



**Gluing small P. meandrina colonies  
back onto solid substrate**

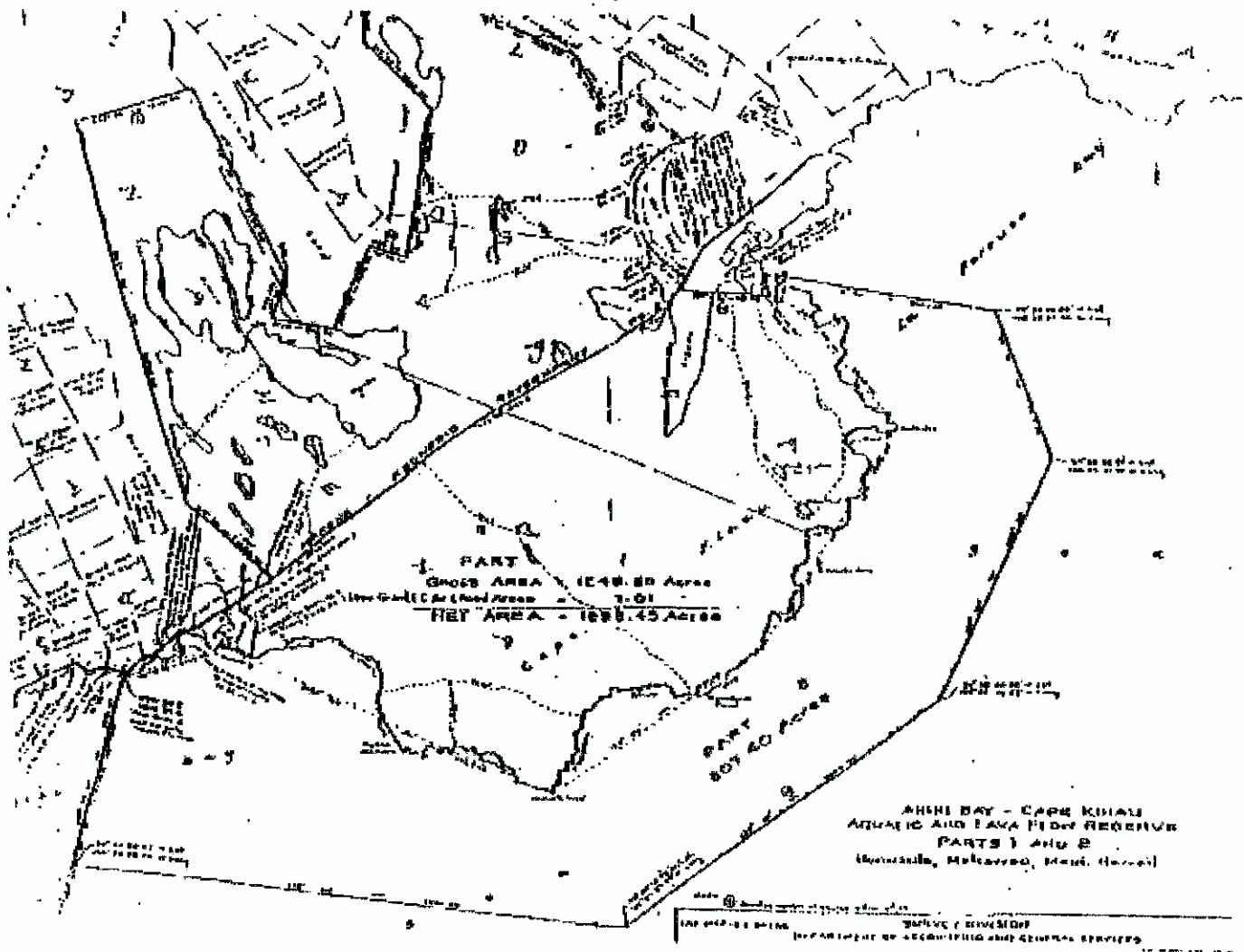


**Gathering up and  
attaching fragments  
of P. Lobata**



**Repositioning a  
large P. lobata head**





**EXHIBIT S**



Division	Summary of Costs	Amount
<b>DAR</b>	<b>Labor*</b>	
	1 staff - 24 hrs. @ \$31.49/hr.	\$755.76
	1 staff - 12 hrs. @ \$16.38/hr.	\$196.56
	1 staff - 8 hrs. @ \$33.99/hr.	\$271.92
	1 staff - 4 hrs. @ \$61/hr.	244.00
	<b>Vessel Expenses</b>	
	2 days @ \$500/day	\$1,000.00
	<b>Travel Expenses</b>	
	2 round trip tickets (O'ahu-Maui)	\$179.20
<b>DOCARE</b>	<b>Labor*</b>	
	1 staff - 11 hrs. @ \$30.02/hr.	\$330.22
	<b>Vehicle Expenses</b>	
	86 miles @ \$.43/mile	\$36.98
<b>DOFAW</b>	<b>Labor*</b>	
	1 staff - 8 hrs. @ \$26.58/hr.	\$212.64
	1 staff - 16 hrs. @ \$20.47/hr.	\$327.52
	<b>TOTAL</b>	<b>\$3,554.80</b>

\* Labor costs include salary plus fringe benefits (36.46%)

## MAU



Drive Times & Miles		
	Miles	Time
A to B	10	15 min
A to C	13	20 min
A to D	16	25 min
A to E	24	40 min
A to F	36	1 hr 5 min
A to G	9	15 min
A to H	13	28 min
A to I	37	1 hr 30 min
A to J	51	2 hr 30 min

